

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 440 of 1987

with

FIRST APPEALS NOS 441 TO 452 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE M.H.KADRI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
SPECIAL LAND ACQUISITION OFFICER

Versus

BHIKHABHAI KALABHAI PATEL

-----  
Appearance:

MR. P.G.DESAI, GOVERNMENT PLEADER for Petitioner

RESPONDENTS SERVED

-----  
CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE M.H.KADRI

Date of decision: 10/03/97

ORAL JUDGEMENT

In this batch of 13 appeals, the appellant-original

Special Land Acquisition officer, Sabarkantha at Himatnagar has challenged the awards passed in one common order dated 31.7.1986 . by resorting to provisions of Section 54 of the Land Acquisition Act, 1894 ('the Act' for short).

Notification under Section 4(1) of the Act came to be published in Official gazette on 18.8.1982, whereby agricultural lands in question were sought to be acquired. A proposal was received by the Collector ,Sabarkantha from the Executive Engineer ,Himatnagar. It was in respect of lands situated in village Kherol of Vijayanagar taluka belonging to private party for the purpose of making a pond in Vijaynagar, as a result of which, process was started. Notification was issued on 20.5.1982 but was gazetted on 18.8.1982. Notification under Section 6 of the Act also came to be gazetted on 12.5.1983. Notices were issued under Section 9 to the concerned parties.

After hearing and considering the facts and circumstances of the case, the special land acquisition officer fixed the market value in respect of the lands acquired at Rs. 100/- per Are for irrigated land and Rs. 75/- per Are for non-irrigated land and Re. 1/- per Are for waste land. Accordingly,, the Land Acquisition Officer passed an order for payment of compensation to the affected parties.

On a reference under Section 18 of the Act, the District court, Sabarkantha at Himatnagar, on appreciation of the facts and circumstances and evidence, passed the impugned award whereby the market value is enhanced to Rs.350/per Are for irrigated land only holding that there was no non-irrigated land . The District court also granted solatium , interest in view of provisions of Sections 23(2) and 28 of the Act, relying on the award in respect of the acquired land of village Vijaynagar which is across the river.

After having given anxious thoughts to the facts and circumstances and the evidence emerging from the record of the present case, we are of the opinion that the assessment of market value enhanced by the District court at Rs. 350/- per Are could not be shown to be unreasonable, unjustified requiring interference of this court in this batch of appeals.

The following facts may be highlighted :-

(i) The District court on reference placed reliance

on the evidence of the claimants. It is rightly found that there is no non-irrigated nature of land;

(ii) No evidence is led by the appellant. Thus, Government has failed to adduce any sort of evidence to counter the evidence of the claimants.

(iii) Awards in respect of acquired land produced at Exs.41 and 47 are in respect of acquired land in Vijaynagar which is across the river. It is in evidence that on one side of the river, there is village Kherol and on the other side of the river, there is village Vijaynagar. There is no doubt that Vijaynagar is a taluka place. However, the lands are adjacent which were taken into for comparison, excepting the intervening river bed.

(iv) Apart from that, exh.41 goes to show that the court has awarded an amount of Rs.350/-per Are in case of acquired land of Vijaynagar; whereas as per the award produced at Exh.47, the market value is assessed at Rs.500/- per Are. Because Vijaynagar is part of taluka centre though nearest to the acquired land, the Reference court has taken into consideration this aspect and has only assessed the amount of Rs. 350/- per Are.

(v) The documentary evidence produced at Exhs.41 and 47 and the documentary evidence in the nature of maps produced at Exh. 39 and 40 clearly go to show that the awards passed in respect of the acquired lands of Vijaynagar village are comparable and acceptable insofar as acquired lands in question are concerned. Therefore, the District court on Reference has rightly assessed the market value at the rate of Rs.350/-per Are.

There is no challenge insofar as additional amount of compensation under the amended provisions of Act 68/1984 is concerned. Therefore, we do not propose to discuss in details. A detailed chart in respect of the amount awarded by the District court together with additional amount available and permissible under the Amended Act 68 of 1984 is prepared. In view of the said chart, we can make out that the District court has awarded an amount of Rs 5,000/towards construction of well in Original Reference case No. 527 of 1984 which is challenged in First Appeal No. 440 of 1987. In view of the ratio

propounded by the Honourable Apex court in O Janardhan Reddy vs. Spl.Dy.Collector, A.P, AIR 1995 S.C. 186, the amount assessed and awarded at Rs. 5,000/-towards cost of construction of well, cannot be independently assessed and, therefore,, that amount is not payable in respect of agricultural property. Therefore, the amount awarded by the District court is required to be deducted in that case and to that extent, the said award shall stand modified. Except that, remaining awards are hereby affirmed and confirmed,leaving the parties to bear their own costs, in the peculiar facts and circumstances.

In view of the aforesaid facts and circumstances and considering the relevant proposition of law, we are satisfied that the impugned awards in this entire group of 13 appeals are justified except in one Reference in respect of well as aforesaid.Therefore, all the appeals shall stand dismissed except First Appeal No.440 of 1987 which is partly allowed. However, there shall be no order as to costs..